LEGISLATIVE CONSENT MEMORANDUM

HEALTH SERVICE MEDICAL SUPPLIES (COSTS) BILL

Background

1. This memorandum has been lodged by Shona Robison, Cabinet Secretary for Health and Sport, under Rule 9B.3(c)(ii) of the Parliament’s standing orders. The Health Service Medical Supplies (Costs) Bill 2016 (“the Bill”) was introduced in the House of Commons on Thursday, 15 September 2016. The latest version of the Bill can be found at: http://services.parliament.uk/bills/2016-17/healthservicemedicalsuppliescosts.html

Content of the Health Service Medical Supplies (Costs) Bill

2. The Bill makes provisions in connection with controlling the cost of health service medicines and other medical supplies. It both updates and strengthens existing reserved powers under the National Health Service Act 2006 in three main areas. The proposed powers will:

- Put beyond doubt that the UK Government can require companies to make payments to control the cost of health service medicines;
- Enable the UK Government to require companies to reduce the price of an unbranded generic medicine, or to impose other controls on that company’s unbranded medicine, even if the company is in the voluntary scheme (the Pharmaceutical Price Regulation Scheme) for their branded medicines; and
- Enable the UK Government to make regulations to obtain information on sales and purchases of health service medicines, medical supplies and other related products from all parts of the supply chain, from manufacturer to pharmacy, for defined purposes.

Provisions which relate to Scotland

3. All three areas are of direct interest to Scotland, and the other Devolved Administrations, in terms of controlling costs of medicines and medical supplies (both branded and generic) through the UK Government-led statutory and voluntary price regulation schemes. The control of such costs is reserved to the UK Parliament (by virtue of paragraph J4 of Schedule 5 to the Scotland Act 1998). The gathering of information (the Information Power) on sales and purchases of health service products from all parts of the supply chain across the UK will help inform the reimbursement arrangements on the purchase of drugs for community pharmacy contractors and GP dispensing practices, as well as evaluating value for money to the NHS and helping to ensure that adequate supplies of health service products are available.

Reasons for seeking a legislative consent motion

4. One aspect of the Bill, as amended on 3 November 2016, contains provisions which are within the legislative competence of the Scottish Parliament, making it a “relevant Bill” under Chapter 9B of the Standing Orders of the Parliament, consequently requiring the consent of the Scottish Parliament. The provision relates to the information powers as set out under Clause 6 of the Bill which introduces two new sections to the National Health Service Act 2006 covering “Provision of Information about health service products”
(section 264A) and “Disclosure of Information” (section 264B). When the Bill was introduced, this clause did not make provision for any purpose within the legislative competence of the Scottish Parliament or which alters that competence or the executive competence of the Scottish Ministers. It was limited to provisions which either related to reserved matters or applied in England only.

5. Following a period of negotiation and then agreement between the Department of Health and Scottish Government, Government amendments were tabled at House of Commons Committee Stage on 3 November to include provisions which extend to Scotland and fall within the legislative competence of the Scottish Parliament. Details of the Government amendments can be found at: http://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0072/amend/healthservice_rm_pbc_1103.pdf

6. These amendments to the National Health Service Act 2006 strengthen and expand the statutory powers of the Secretary of State for Health to collect information on sales and purchase of health service medicines, medical supplies and other related products for the purpose of informing reimbursement arrangements, determining whether the supply chain provides value for money and controlling the cost of medicines.

7. These provisions effectively give powers to the Secretary of State for Health to collect information from all parts of the UK supply chain - particularly manufacturers and wholesalers - and the amendment will enable disclosure of this information to the Scottish Ministers, Common Services Agency for NHSScotland (and Welsh and Northern Irish equivalents) for use for specific devolved purposes. All three Devolved Administrations are preparing similar legislative consent motions.

8. For Scotland, this amended provision will augment the existing quarterly Drug Pricing Inquiry Survey and Drug Tariff arrangements. Regulation 12 and Schedule 1 (paragraphs 10 (1) and (2)) of the NHS (Pharmaceutical Services) (Scotland) Regulations 2009 provide for drug tariff and reimbursement arrangements respectively. Schedule 1 of the Regulations already provides for the Scottish Ministers and the Common Services Agency for NHSScotland to gather information from the main body of dispensing contractors for the purposes of monitoring margins on the purchase of health service products and informing reimbursement. However, the Scottish Government considers it disproportionate for Scotland to have a specific power to obtain information directly from across the supply chain as the main body of manufacturers and wholesalers are UK in character.

9. Through Memorandum of Understanding (MOU) arrangements, the powers will allow the UK Government and Devolved Administrations to work together to access and share data on more products and from more parts of the supply chain to improve the data which informs the reimbursement arrangements on the purchase of drugs for community pharmacy contractors and GP dispensing practices. In addition, these powers will have the effect of evaluating whether the supply chain as a whole, a specific sector, or specific product groups are providing value for money to the NHS and that adequate supplies of health service products are available.

10. Prior to this Bill, the provisions about the pricing of medical supplies were found in section 260 of the National Health Service Act 2006 for England and Wales, and in section 49 of the National Health Service (Scotland) Act 1978 for Scotland. This Bill tidies that up by repealing section 49 of the National Health Service (Scotland) Act 1978 and widening
the extent of section 260 of the National Health Service Act 2006 so that it will also extend to Scotland and Northern Ireland.

Consultation

11. The UK Government previously consulted on options to introduce a payment mechanism in the statutory medicines pricing scheme. Consultation responses received queried whether the UK Government had sufficient power to introduce such a mechanism and, as such, the UK Government reviewed the position and concluded that amendments should be made to primary legislation to put the matter beyond doubt. The Bill aims to achieve that and, in response to the consultation, the UK Government also announced its intention to legislate to require all parts of the supply chain to keep and, when requested, supply information on the sales and purchase of health service medicine. Subject to the passage of the Bill through the UK Parliament, it is anticipated that a public consultation will be undertaken on the regulations made under the new information powers during Spring/Summer 2017 for commencement in Autumn 2017.

Financial implications

12. There are no financial implications in terms of costs to the Scottish Government or the NHS in Scotland. The measures will, however, help to better inform existing Drug Tariff and reimbursement arrangements, and to evaluate value for money to the NHS and helping to ensure that adequate supplies of health service products are available.

13. Taken together, the measures in the Bill will substantially improve (i) the controls on the cost of health service drugs and medical supplies, and (ii) evaluation of value for money to the NHS and whether adequate supplies of health service products are available. Overall, we believe the Bill is a positive development for all four UK countries engendering closer collaboration on health service costs.

Conclusion

14. It is the view of the Scottish Government that legislative consent covering the information powers in the Bill (to the extent that they relate to devolved matters) is in the best interest of NHSScotland. The Scottish Government considers that this is the most pragmatic approach as it gives effect to a more streamlined framework for application of the information powers and reduces duplication of effort across the four UK countries.

Draft legislative consent motion

15. The draft motion, which will be lodged by the Cabinet Secretary for Health and Sport, is:

“That the Parliament agrees that the relevant provisions of the Health Services Medical Supplies (Cost) Bill 2016, introduced in the House of Commons on 15 September 2016, relating to the costs of health service medicines, medical supplies and other related products, and specifically those relating to information powers, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament”.

SCOTTISH GOVERNMENT
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